

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID CARLETON, an individual,

Plaintiff,

v.

504 GAP, INC. DISABILITY PLANS and
THE GAP, INC., in its capacity as Plan
Administrator,

Defendants.

Case No. CV 07-5924 (JSW)

**[PROPOSED] ORDER
GRANTING DEFENDANTS'
MOTION TO DISMISS [FED.
R. CIV. P. 12(b)(6)]**

Motion Date: May 16, 2008

Motion Time: 9:00 a.m.

Courtroom: 2

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants filed a motion to dismiss Plaintiff David Carleton's ("Carleton") Second and Third Causes of Action as set forth in his complaint in this action.

Defendants' motion to dismiss came for hearing on May 16, 2008, in Department 2 of the above-entitled court.

Considering the parties' papers regarding Defendants' motion and hearing oral argument, Defendants' motion is GRANTED, as set forth below:

IT IS HEREBY ORDERED as follows:

1. Carleton's Second Cause of Action For Breach of Fiduciary Duty is dismissed with prejudice because Carleton already has an available remedy under

1 ERISA Section 502(a)(1)(B); and

2 2. Carleton's Third Cause of Action For Statutory Penalties is dismissed
3 with prejudice for failure to state a claim because the allegations do not provide
4 Defendant with fair notice of the claim or the grounds upon which plaintiff bases
5 his claim for alleged failure to produce documents.

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7 **IT IS SO ORDERED.**

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9 Dated: _____

10 Hon. Jeffrey S. White
11 Judge of the District Court
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